Supreme Court, U. S.
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No. 76-1245

In the Supreme Court of the United States

OCTOBER TERM, 1976

WILLIAM A. ALBAUGH, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner brought this action in the United States District Court for the District of Maryland, challenging the constitutionality of the cession of the District of Columbia from the State of Maryland to the United States. The district court dismissed the complaint on the authority of *Albaugh* v. *Tawes*, 379 U.S. 27, affirming 233 F. Supp. 576 (D. Md.), in which petitioner had been the plaintiff, and the court of appeals affirmed *per curiam* on the ground of *res judicata* (Pet. App. 1a-5a, 7a-8a).

Petitioner's contentions on the constitutional merits of this case are frivolous, were rejected by this Court in

Albaugh v. *Tawes, supra,*[1] and do not warrant reconsideration. The cession of the District of Columbia to the United States was authorized by Article I, Section 8, Clause 17 of the Constitution,[2] and under that provision Congress has plenary legislative authority over the District of Columbia and its residents. Petitioner's principal concern is with the voting rights of District residents in federal elections, but as the district court below correctly observed (Pet. App. 5a), "Congress has given certain voting rights to residents of the District; for additional rights, they and the plaintiff herein must look to Congress."

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

MAY 1977.

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[1]The issue also was decided against petitioner in *Albaugh* v. *Agnew*, Civil Action No. 19599 (D. Md.). See also *Albaugh* v. *Mandel*, No. 74-1282 (D.D.C.). Since the federal government was not a party defendant in the earlier cases in which petitioner's claim was rejected on the merits, arguably the present suit was not barred by *res judicata*. But cf. *Blonder-Tongue Laboratories, Inc.* v. *University of Illinois Foundation*, 402 U.S. 313. But it is clear that petitioner has had ample opportunity in prior cases to litigate his claim, and at least *Albaugh* v. *Tawes* constitutes *stare decisis* if not *res judicata* as to the issue presented.

[2]Cession was made by Maryland in its Act of December 23, 1788, chapter 46, and accepted by Congress by the Act of July 16, 1790, chapter 28, 1 Stat. 130.

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